

By the Committees on Governmental Oversight and Accountability;
Commerce and Tourism; and Commerce and Tourism; and Senator Lynn

585-03566-12

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1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 288.075, F.S., which
4 provides public records exemptions for information
5 held by economic development agencies; saving from
6 repeal the exemption concerning plans, intentions, or
7 interests of a private corporation, partnership, or
8 person to locate, relocate, or expand any of its
9 business activities in this state; providing that the
10 exemption applies if a request for confidentiality is
11 made before an economic incentive agreement is signed;
12 specifying the time period during which information
13 remains confidential and exempt when a final project
14 order for a signed economic development agreement is
15 issued; saving from repeal the exemption for trade
16 secrets; saving from repeal the exemption for
17 proprietary confidential business information; saving
18 from repeal the exemption for identification, account,
19 and registration numbers and sales, wage, and tax data
20 relating to a recipient of an economic development
21 incentive; providing that the taxes paid by businesses
22 participating in an economic incentive program may be
23 disclosed in the aggregate; authorizing the disclosure
24 of specified information relating to a business 180
25 days after the final project order for an economic
26 incentive agreement is issued, until a date specified
27 in the final project order, or if the information is
28 otherwise disclosed, whichever occurs first; removing
29 the scheduled repeal of the exemptions; providing an

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30 effective date.

31
32 Be It Enacted by the Legislature of the State of Florida:

33
34 Section 1. Section 288.075, Florida Statutes, is amended to
35 read:

36 288.075 Confidentiality of records.—

37 (1) DEFINITIONS.—As used in this section, the term:

38 (a) "Economic development agency" means:

39 1. The Department of Economic Opportunity;

40 2. Any industrial development authority created in
41 accordance with part III of chapter 159 or by special law;

42 3. Space Florida created in part II of chapter 331;

43 4. The public economic development agency of a county or
44 municipality or, if the county or municipality does not have a
45 public economic development agency, the county or municipal
46 officers or employees assigned the duty to promote the general
47 business interests or industrial interests of that county or
48 municipality or the responsibilities related thereto;

49 5. Any research and development authority created in
50 accordance with part V of chapter 159; or

51 6. Any private agency, person, partnership, corporation, or
52 business entity when authorized by the state, a municipality, or
53 a county to promote the general business interests or industrial
54 interests of the state or that municipality or county.

55 (b) "Proprietary confidential business information" means
56 information that is owned or controlled by the corporation,
57 partnership, or person requesting confidentiality under this
58 section; that is intended to be and is treated by the

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59 corporation, partnership, or person as private in that the
60 disclosure of the information would cause harm to the business
61 operations of the corporation, partnership, or person; that has
62 not been disclosed unless disclosed pursuant to a statutory
63 provision, an order of a court or administrative body, or a
64 private agreement providing that the information may be released
65 to the public; and that is information concerning:

66 1. Business plans.

67 2. Internal auditing controls and reports of internal
68 auditors.

69 3. Reports of external auditors for privately held
70 companies.

71 (c) "Trade secret" has the same meaning as in s. 688.002.

72 (2) PLANS, INTENTIONS, AND INTERESTS.—

73 (a) 1. If ~~Upon written request from~~ a private corporation,
74 partnership, or person requests in writing before an economic
75 incentive agreement is signed that, information held by an
76 economic development agency maintain the confidentiality of
77 information concerning plans, intentions, or interests of a such
78 private corporation, partnership, or person to locate, relocate,
79 or expand any of its business activities in this state, the
80 information is confidential and exempt from s. 119.07(1) and s.
81 24(a), Art. I of the State Constitution. The information shall
82 remain confidential and exempt for 12 months after the date an
83 economic development agency receives a request for
84 confidentiality or until the information is otherwise disclosed,
85 whichever occurs first.

86 2. ~~(b)~~ An economic development agency may extend the period
87 of confidentiality specified in subparagraph 1. paragraph ~~(a)~~

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88 for up to an additional 12 months upon written request from the
89 private corporation, partnership, or person who originally
90 requested confidentiality under this section and upon a finding
91 by the economic development agency that such private
92 corporation, partnership, or person is still actively
93 considering locating, relocating, or expanding its business
94 activities in this state. Such a request for an extension in the
95 period of confidentiality must be received prior to the
96 expiration of any confidentiality originally provided under
97 subparagraph 1. this section.

98
99 If a final project order for a signed economic development
100 agreement is issued, the information shall remain confidential
101 and exempt for 180 days after the final project order is issued,
102 until a date specified in the final project order, or until the
103 information is otherwise disclosed, whichever occurs first.
104 However, such period of confidentiality may not extend beyond
105 the period of confidentiality established in subparagraph 1. or
106 subparagraph 2.

107 (b)-(e) A public officer or employee may not enter into a
108 binding agreement with any corporation, partnership, or person
109 who has requested confidentiality of information under this
110 subsection until 90 days after the information is made public
111 unless:

112 1. The public officer or employee is acting in an official
113 capacity;

114 2. The agreement does not accrue to the personal benefit of
115 such public officer or employee; and

116 3. In the professional judgment of the officer or employee,

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117 the agreement is necessary to effectuate an economic development
118 project.

119 (3) TRADE SECRETS.—Trade secrets held by an economic
120 development agency are confidential and exempt from s. 119.07(1)
121 and s. 24(a), Art. I of the State Constitution.

122 (4) PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION.—
123 Proprietary confidential business information held by an
124 economic development agency is confidential and exempt from s.
125 119.07(1) and s. 24(a), Art. I of the State Constitution, until
126 such information is otherwise publicly available or is no longer
127 treated by the proprietor as proprietary confidential business
128 information.

129 (5) IDENTIFICATION, ACCOUNT, AND REGISTRATION NUMBERS.—A
130 federal employer identification number, unemployment
131 compensation account number, or Florida sales tax registration
132 number held by an economic development agency is confidential
133 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
134 Constitution.

135 (6) ECONOMIC INCENTIVE PROGRAMS.—

136 (a) The following information held by an economic
137 development agency pursuant to the administration of an economic
138 incentive program for qualified businesses is confidential and
139 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
140 Constitution for a period not to exceed the duration of the
141 incentive agreement, including an agreement authorizing a tax
142 refund or tax credit, or upon termination of the incentive
143 agreement:

144 1. The percentage of the business's sales occurring outside
145 this state and, for businesses applying under s. 288.1045, the

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146 percentage of the business's gross receipts derived from
147 Department of Defense contracts during the 5 years immediately
148 preceding the date the business's application is submitted.

149 ~~2. The anticipated wages for the project jobs that the~~
150 ~~business plans to create, as reported on the application for~~
151 ~~certification.~~

152 ~~2.3. The average wage actually paid by the business for~~
153 ~~those jobs created by the project or~~ An individual employee's
154 personal identifying information that ~~which~~ is held as evidence
155 of the achievement or nonachievement of the wage requirements of
156 the tax refund, tax credit, or incentive agreement programs or
157 of the job creation requirements of such programs.

158 ~~3.4.~~ The amount of:

- 159 a. Taxes on sales, use, and other transactions paid
160 pursuant to chapter 212;
- 161 b. Corporate income taxes paid pursuant to chapter 220;
- 162 c. Intangible personal property taxes paid pursuant to
163 chapter 199;
- 164 d. Insurance premium taxes paid pursuant to chapter 624;
- 165 e. Excise taxes paid on documents pursuant to chapter 201;
- 166 f. Ad valorem taxes paid, as defined in s. 220.03(1); or
- 167 g. State communications services taxes paid pursuant to
168 chapter 202.

169
170 However, an economic development agency may disclose in the
171 annual incentives report required under s. 288.907 the aggregate
172 amount of each tax identified in this subparagraph and paid by
173 all businesses participating in each economic incentive program.

174 (b)1. The following information held by an economic

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175 development agency relating to a specific business participating
176 in an economic incentive program is not confidential or exempt
177 from disclosure 180 days after a final project order for an
178 economic incentive agreement is issued, until a date specified
179 in the final project order, or if the information is otherwise
180 disclosed, whichever occurs first ~~An economic development agency~~
181 ~~may release:~~

182 a. The name ~~names~~ of the qualified business businesses.

183 b. The total number of jobs the ~~each~~ business committed
184 ~~expects~~ to create or retain.

185 c. The total number of jobs created or retained by the ~~each~~
186 business.

187 d. Notwithstanding s. 213.053(2), the amount of tax
188 refunds, tax credits, or incentives awarded to, ~~and~~ claimed by,
189 or, if applicable, refunded to the state by the ~~each~~ business.

190 e. The anticipated total annual wages of employees the
191 business committed to hire or retain.

192 2. For a business applying for certification under s.
193 288.1045 which is based on obtaining a new Department of Defense
194 contract, the total number of jobs expected and the amount of
195 tax refunds claimed may not be released until the new Department
196 of Defense contract is awarded.

197 ~~(c) An economic development agency may publish statistics~~
198 ~~in the aggregate and classified so as to prevent the~~
199 ~~identification of a single qualified applicant.~~

200 (7) PENALTIES.—Any person who is an employee of an economic
201 development agency who violates the provisions of this section
202 commits a misdemeanor of the second degree, punishable as
203 provided in s. 775.082 or s. 775.083.

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204 ~~(8) LEGISLATIVE REVIEW OF EXEMPTIONS. This section is~~
205 ~~subject to the Open Government Sunset Review Act in accordance~~
206 ~~with s. 119.15 and shall stand repealed on October 2, 2012,~~
207 ~~unless reviewed and saved from repeal through reenactment by the~~
208 ~~Legislature.~~

209 Section 2. This act shall take effect upon becoming a law.